IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1251 OF 2000

Sanjay Sitaram Khamkar. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Shri D. Ghosh i/b. M/s.Law Global for Applicant.
Mr.R.S. Ghadge for for Respondent.
Ms.S.D. Shinde, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 24, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant is challenging the order of process issued by the Metropolitan Magistrate on a complaint which was filed by the respondent under Section 138 of the Negotiable Instruments Act for dishonour of cheque which was drawn by the applicant herein.

2. The grounds raised by the applicant in this petition is that the process was issued without any

application of mind as the complaint itself was time barred and was based on the second notice which was issued after the cheque was deposited again after first dishonour. He has relied on the judgment of the Supreme Court in the case of **Sadanandan Bharadan v/s. Madhava Sunil Kumar, reported in 1998 (6) SCC 514.** It was submitted that the second complaint was not maintainable as the cause of action had arisen after the first dishonour of cheque and after the issuance of the first notice and therefore, the second complaint which was filed after the second notice was clearly barred by limitation as laid down under Section 138 read with Section 142 of the Negotiable Instruments Act.

3. It is not possible to accept the submission made by the learned Counsel for the petitioner. During the pendency of this petition when the proceedings in the lower Court were stayed, Section 142 of the Negotiable Instruments Act was amended and a proviso was inserted permitting the complainant to file an application for condonation of delay and this discretion was vested with the Magistrate to consider the application condoning the

delay if sufficient cause was shown by the applicant. Since the proviso which is inserted by the amendment has given right to the complainant which essentially brings about change in the procedure of making an application before the Magistrate, in my view, it would have a retrospective effect particularly when this complaint has been stayed by this Court and the complaint has not been finally dismissed before the amendment brought into force.

4. However, the fact remains that the Magistrate has issued process without considering this question and in view of the judgment of the Supreme Court in **Adalat Prasad V/s. Rooplal Jindal & Ors. reported in 2004(4) Mh.L.J. 274,** the Court would not be in a position to recall its own order. In this view of the matter, I am of the view that the order of process which has been issued by the Magistrate without taking into consideration the question of limitation, will have to be quashed.

5. However, the Magistrate shall consider the

question of limitation which is raised by the applicant herein and permit the complainant to file the application for condonation of delay and thereafter, decide the said application after giving an opportunity to the applicant to file a reply and decide the same on merits and in accordance with law and thereafter consider the question of issuance of process.

6. With these directions, the application is partly allowed. The process issued by the Magistrate is hereby quashed. The plea recorded also is quashed and the matter is remanded back to the Magistrate. The Magistrate shall consider the application for condonation of delay if filed by the respondent-complainant, as expeditiously as possible and thereafter consider the question of issuance of process within a short period.

. With these directions, the application is disposed of.

(V.M. KANADE, J.)